IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.6747 of 2005.
Date of Decision: October 10,2006.

Vijay Bansal

....**Petitioner**

through
Mr. Vishal Sharma, Advocate

Versus

Manjit Singh

...**Respondent**
through
Mr. A.K.Kalsi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This revision petition has been directed against the judgment dated 9th November, 2005 passed by the Appellate Authority, Ludhiana whereby the petitioner's rent appeal against the order of eviction dated 23rd December,2003 passed by the Rent Controller, Ludhiana, has been dismissed being barred by limitation. According to the Appellate Authority, there was delay of 21 days in filing of the appeal.

The undisputed facts are that the petitioner is a tenant in the premises owned by the respondent. An eviction petition was filed against the petitioner which was accepted by the Rent Controller, Ludhiana, who ordered petitioner's eviction vide his judgment dated 23rd December, 2003.

Though, the appeal was required to be filed within a period of fifteen days, the petitioner filed the same on 28th January, 2004. Along with the appeal, he moved an application under Section 5 of the Limitation Act, which has, however, been dismissed by the Appellate Authority vide its impugned order dated 9th November, 2005, resultantly his appeal has also been dismissed.

The condonation of delay in filing of the appeal was sought on the ground that the petitioner was implicated in FIR No.378 of 2000, under Sections 366,376,506 read with Section 34 of the Indian Penal Code and was convicted in the said case by learned Additional Sessions Judge (Fast Track Court), Ludhiana, vide his judgment dated 27th May, 2003 and was sentenced to undergo RI for ten years. The petitioner was taken into custody on 27th May, 2003. The eviction order dated 23th December, 2003 was passed while the petitioner was in jail. He came out on parole on 2nd January, 2004 and upon visiting the Courts came to know about the eviction order on 3rd January, 2004. The petitioner thereafter applied for the certified copy of the said order on 17th January, 2004 and on receipt thereof on 27th January, 2004, he filed the appeal on 28th January, 2004.

According to the petitioner, if the days taken by the Copying Agency in preparing the certified copy are to be excluded, there was delay of only three days in filing of the appeal. Learned Appellate Authority has, however, held that since the certified copy was applied for after the expiry of the limitation period, the limitation started running which did not stop merely because the petitioner had applied for the certified copy and in this manner there was delay of 21 days in filing of the appeal. The Appellate Authority consequently dismissed the application.

I have heard learned counsel for the parties at length and perused the impugned order.

By now, it is well settled that the expression "sufficient cause" should receive a liberal construction so as to advance the cause of substantial justice. Unless the Court finds that a litigant has acted in a totally negligent manner or his action lacks *bona-fide,* the Courts shall make an endeavour to decide the lis on merits. True it is that with the expiry of limitation to file an appeal, a right might accrue in favour of the other party which, however, can not be termed to be a `vested right' of such a nature that deprivation thereof can not be compensated in terms of costs. The Court is required to have a pedantic approach in a pragmatic manner. If the Court finds that, in the peculiar facts and circumstances of the case, the delay of a few days had occurred despite *bona-fide* intention to file the appeal, it should promptly invoke its powers under Section 5 of the Limitation Act so that substantial rights of the parties can be adjudicated on merits.

In the case in hand, it is undisputed that the petitioner, due to his involvement in a criminal case, was sentenced to ten years on 27th May, 2003 and was taken into custody on that very day. The petitioner is stated to have been subsequently acquitted by this Court in a Criminal Appeal preferred by him. No doubt, the petitioner was released on parole on 2nd January, 2004. However, it can be well imagined that the petitioner and his family must be totally perturbed due to conviction in the criminal case, which could not stand to the scrutiny of appellate jurisdiction of this Court and that factor must have single handedly caused delay in filing of the appeal, which, under the provisions of the special Statute, was required to be filed within 15 days only. In the facts and circumstances of this case, a

delay of 21 days can not be said to be unexplainable or of such a nature that the respondent can be assumed to have acquired an indefeasible vested right.

Consequently and for the reasons afore-stated, I am satisfied that there exists "sufficient cause" to condone the delay in filing of appeal by the petitioner. Accordingly, the revision petition is allowed. The impugned order dated 9th November, 2005 is set aside and the delay in filing of the appeal is condoned, however, subject to payment of costs of Rs.3000/- to the respondent. The Appellate Authority, Ludhiana, is directed to decide the appeal on merits as early as possible and preferably within a period of six months.

Parties through their counsel are directed to appear before the Appellate Authority, Ludhiana, on 7th November, 2006.

October 10, 2006. **(SURYA KANT)**
dinesh **JUDGE**